SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C.

THE UNITED STATES OF AMERICA,
ex. rel.
MARCELO RODRIGUEZ,

Petitioner-appellant;

- against -

79 Civ. 8598
(Pro-se)

UNITED STATES ARMY, COMMANDER,
243 FLUSHING AVENUE, BROOKLYN,
NEW YORK,11251.

Hon. DAVID R. HARRIS, Superintendent,
GREENHAVEN CORRECTIONAL FACILITY, at,
DRAWER B, STORMVILLE, NEW YORK,12582.

Respondent-appellees;

JURISDICTIONAL STATEMENT

Mr. MARCELO RODRIGUEZ
DRAWER B - # 76-A-3247
STORMVILLE, NEW YORK,12582
Petitioner-appellant in
Pro-se

SUPREME COURT OF THE UNITED STATES
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Respondent-appellees;

STATE OF NEW YORK)
COUNTY OF DUTCHESS) s.s.

JURISDICTIONAL STATEMENT

Marcelo Rodriguez, petitioner-appellant,("Appellant herein, draws this Jurisdictional Statement, pro-se, as an appeal from the Order of Denial of the United States Circuit Court for the Second Circuit of New York ("Circuit rendered against Appellant on the eighth day of February, 1980, under Docket Number 79 Civ. 3598 on a Slip Op.,

in an official report (Appendix # 4).

Appellant brings this appeal by way of Section 1251(a)(1)(b)(2), Title 28 United States Code, for the purpose of bringing for review before this Honorable Court the conflict presently existing between the United St ates District Court for the Eastern District of New York and the United States District Court for the District of New Jersey, the latter under Docket Number 79 Civ. 1178 and the former under Docket Number 79 Civ. 305, respectively, on the issue of "Custody" a pre-requisite to the District Courts Jurisdiction, under Section 2241(a) Title 28 United States Code, and the applicability of the Interstate Agreement on Detainers Act ("IAD").

The nature of the proceeding(s) brought before the District Courts dealt with whether a military detainer imposes sufficient custody upon Appelant to trigger the jurisdiction of a district court for the purpose of the jurisdictional issue required by Section 2241(a), Title 28 United States Code, and whether the IAD would be applicable to the military detainer at challenge.

The United States District Court for the District of New Jersey, under Docket Number 1178 , rendered the judgment sought to be review by this Court on the 12th day of October, 1979, subsequently appealed to the Second Circuit Court of New York under Docket Number 79 Civ. 8598, on the eighth day of February, one-thousand-nine-hundred-and-eighty. On the 17th day of October, one-

thousand-nine-hundred-and-eighty, the United States District Court for the Eastern District of New York, dismissed a similar action under Docket Number 79 Civ. 305, which Appellant claims is in direct conflict with that of the District Court of New Jersey, presently on appeal to this Court.

The Statutory Provision believe to confer the jurisdiction of this Court is assigned to Section 1251 (a)(1)(b)(2), Title 28 United States Code, as there is conflict between the United States District Court for the Eastern District of New York and the United States District Court for the District of New Jersey.

The cases believe to sustain the jurisdiction of this Court are:

(a). MORRISSEY v. BREWER, 408 U.S. 471 (1972)

(b). HENSLEY v. MUNICIPAL COURT, 411 U.S. 345 (1973).

(c). BRADEN v. 30th JUDICIAL DISTRICT, 410 U.S. 484 (1973).

(d). MOODY v. DAGGETT, 429 U.S. 78 (1976)

QUESTIONS PRESENTED

(1). IS APPELLANT IN THE CUSTODY OF THE UNITED STATES ARMY COMMANDER AT 243 FLUSHING AVENUE ?

(2). WHETHER THE MILITARY DETAINER LODGED AGAINST APPELLANT IMPOSES SUFFICIENT CUSTODY TO ACQUIRE THE JURISDICTION OF THE EASTERN DISTRICT COURT OF NEW YORK UNDER Section 2241(a), Title 28 U.S.C. ?

(3). WHETHER THE INTERSTATE AGREEMENT ON DETAINERS ACT APPLICABLE TO THE MILITARY DETAINER AT CHALLENGE LODGED BY THE COMMANDER AT 243 Flushing Avenue, New York, UNDER TITLE 18 U.S.C., Section II(a), Article 2, Appendix ?

STATEMENT OF THE CASE

Appellant, Marcelo Rodriguez, brings this appeal on a Jurisdictional Statement, under the provisions of Section 1251(a)(1)(b)(2), Title 28 United States Code, before this Honorable Court, for a writ of habeas corpus, under the provisions of Section 2241(a)(c)(1-4), Title 28 United States Code, releasing him from the custody of the Commander, United States Army, at 243 Flushing Avenue, Brooklyn, New York. The Army's custody over Appellant is alleged to arise out of a militaru detainer lodged against him with his present custodian, the Warden of the Greenhaven Correctional Center in New York.

Appellant is presently incarcerated at the Greenhaven Correctional Center in Stormville, New York ("Greenhaven"). He is serving two consecutive life sentences for murder and a concurrent term for armed robbery. Appellant is now in the actual physical custody of the New York Authorities. Appellant does use this appeal to attack the validity of his convictions in New York State Courts.

When the offenses for which he is presently incarcerated were committed, appellant was a member of the United States Army, and was absent without leave from his assigned duty station at Fort Monmouth, New Jersey. Upon learning of Appellant's whereabouts, the Commander at Flushing Avenue, Brooklyn, New York, lodged a military detainer with the warden of Greenhaven pursuant to Army Regulation ("A.R.") 630-10 § III: 1-8. The detainer directs the Warden to return Appellant to the Army upon his release from civilian custody. (Appendix # 8). 1/

Appellant filed the instant petition at challenge at the United States District Court for the Eastern District of New York, on or about the 16th day of April, 1979. It names as respondents the Commander at 243

1/ The military detainer states: " It is requested that this Headquaters be notified prior to the release of the subject and that he be detained until such time as he can be taken into custody....."

Flushing Avenue, Brooklyn, New York; the Secretary of Defense; the United States Attorney General ("hereinafter collectively referred to as the "United States"); the Warden of Greenhaven; and the Attorney General of the State of New York. Appellant argues that he is custody of the Commander at Flushing Avenue, Brooklyn, New York, by virtue of the military detainer and that such custody is unlawful and in violation of Appellant's Sixth Amendment Right to a speedy trial and the Interstate Agreement on Detainers Act ("IAD"), Article 2; Section II(a), 18 U.S.C., Appendix (Appendix # 7)

The United States challenged Appellant's assertion that he is custody of the Commander at Flushing Avenue, Brooklyn, New York. The Eastern District Court so held. ("Eastern District Court").

Although, the United States District Court found jurisdiction under the rationale(s) of Strait v. Laird, 406 U.S. 341, 345 (1972); Schlanger v. Seamans, 401 U. S. 487, 491 (1971), on the theory of the establishment of meaningful contacts within the district, finding Appellant's Commanding Officer constructively present, the Eastern District Court rule Appellant not to be in the constructive custody of the Commander at Flushing Avenue by stating:

> "Moreover, and to the extent the petition seeks to compel respondent to execute the detainer and expedite the hearing on the "charges," MOODY v. DAGGETT, 429 U.S. 78

(1976), suggest petitioner's claim is without merit. Addressing a contention that a federal parolee has a right under the due process clause of the constitution to a prompt revocation hearing on a parole violator warrant lodged against him as a detainer on the basis of an intervening federal conviction, the Supreme Court rejected the theory on the ground that the prisoner's confinment derived from the intervening conviction and not from the unexecuted violator warrant. Similarly, petitioner's custody here stems not from the detainer lodged against him (and which suggest possible future custody) but from his intervening state sentence."

The Eastern District Court, further went on to hold, that the detainer does not constitute the type of immediate restraint on one's liberty generally recognized to require prompt resolution of the claim.

Finally, the Eastern District Court, went on to hold that the provisions of the (IAD) does not entitle Appellant to relief, although by the nature of its wording of the decision, that in the absence of formal charges of any nature against Appellant, the Act's time limits appear inapplicable. (Appendix # 4)

SWORN TO BEFORE ME, THIS
21st day of Feb, 1980.

Notary Public

COLLEEN A. ZELLER
Notary Public, State of New York
Dutchess County
Comm. Expires March 31, 1980

RESPECTFULLY SUBMITTED
S/ Marcelo Rodriguez

Mr. Marcelo Rodriguez
Drawer B - # 76-A-3247
Stormville, New York, 12582
Petitioner-appellant in
Pro-se

SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C.

THE UNITED STATES OF AMERICA, ex. rel.
MARCELO RODRIGUEZ,
Petitioner-appellant;

: 79 Civ.8598
(Pro-se)

- against -

:

UNITED STATES ARMY, COMMANDER,
243 FLUSHING AVENUE, BROOKLYN,
NEW YORK, 11251.

PROOF
OF SERVICE

Hon. DAVID R. HARRIS, Superintendent;
GREENHAVEN CORRECTIONAL FACILITY, at,
DRAWER B, STORMVILLE, NEW YORK,12582.

:

Respondent-appellees;

STATE OF NEW YORK)
COUNTY OF DUTCHESS) s.s.

MARCELO RODRIGUEZ, first being duly sworn deposes and says;

That under the date of notarization of these moving papers that he has placed at the hands of the Official Parties at the Greenhaven Correctional Facility, located at Drawer B, Stormville, New York, has caused said Official Parties to serve (via) the United States postal Services, true and accurate copies upon all the respondent parties named herein.

cc:

To: THE CLERK OF THE COURT
SUPREME COURT OF THE UNITED STATES
WASHINGTON D. C.,

To: UNITED STATES ARMY, COMMANDER
243 FLUSHING AVENUE
BROOKLYN, NEW YORK,,11251

To: Hon. DAVID R. HARRIS, Superintendent
GREENHAVEN CORRECTIONAL FACILITY
DRAWER B
STORMVILLE, NEW YORK, 12582.

To: THE OFFICE OF THE U.S. ATTORNEY GENERAL
DEPARTMENT OF JUSTICE
44 FOLEY SQUARE
NEW YORK, NEW YORK, 10007

To: The Hon. ATTORNEY GENERAL OF THE STATE OF N.Y.
2 WORLD TRADE CENTER
NEW YORK, NEW YORK, 10007

SWORN TO BEFORE ME, THIS
21 day of April, 1980.
Colleen A. Zeller
Notary Public

COLLEEN A. ZELLER
Notary Public, State of New York
Dutchess County
Comm. Expires March 31, 1980

Respectfully Submitted
S/ Marcelo Rodriguez
Mr. Marcelo Rodriguez
Drawer B - #76-A-3247
Stormville, New York, 12582
Petitioner-appellant in
Pro-se.

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Hon. DAVID R. HARRIS, Superintendent, GREENHAVEN CORRECTIONAL FACILITY, at, DRAWER B, STORMVILLE, NEW YORK, 12582.

Respondent-appellees;

AFFIDAVIT IN FORMA PAUPERIS

(Pursuant to Rule 47 and § 1915, Title 28 U.S.C. § et. seq.

STATE OF NEW YORK)
COUNTY OF DUTCHESS) s.s.

MARCELO RODRIGUEZ, first being duly sworn deposes and says;

That he is the person and Appellant within the above captioned matter, and draws this Affidavit in Forma Pauperis, on it own behalf, without the aid of legal counsel and prays for the relief sought herein.

Appellant shows that he is a poor person unable to pay for the Court Costs required for the filing of the foregoing Jurisdictional Statement or to retain private counsel to prosecute the foregoing allegations contained within the jurisdictional statement, nor has he any property which could be converted into cash to defray the costs of this appeal and prays this Hon. Court to let him proceed as a "pauper" as in those cases made and provided for and for such other and further relief as this Honorable Court may deem just and proper.

SWORN TO BEFORE ME, THIS
21 day of May, 1980.

Colleen A Zeller
Notary Public

COLLEEN A. ZELLER
Notary Public, State of New York
Dutchess County
Comm. Expires March 31, 1980

RESPECTFULLY SUBMITTED
S/ Marcelo Rodriguez

Mr. Marcelo Rodriguez
Drawer B - # 76-A-3247
Stormville, New York, 12582
Petitioner-appellant in
Pro-se.